

JUDGE KOELT

08 CV 01291

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

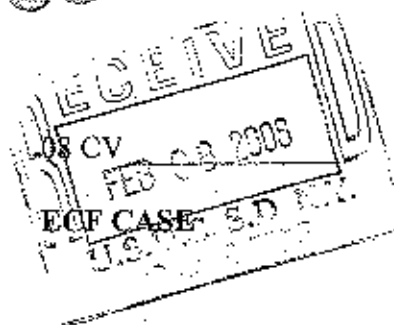
FARGO FREIGHT GmbH,

Plaintiff,

- against -

DEVAL DENIZCILIK VE TIC A.S a/k/a  
DEVAL SHIPPING & TRADING CO.,

Defendant.

**VERIFIED COMPLAINT**

Plaintiff, FARGO FREIGHT GmbH (hereinafter referred to as "FARGO" or "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon LLC, as and for its Verified Complaint against the Defendant, DEVAL DENIZCILIK A.S. a/k/a DEVAL SHIPPING & TRADING CO. (hereinafter referred to as "DEVAL" or Defendant) alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. Jurisdiction over this matter is also present pursuant to the Federal Arbitration Act, 9 United States Code § 1 *et seq.*, and also this Court's federal question jurisdiction, 28 United States Code § 1331.

2. At all times material to this action, Plaintiff was, and still is, a foreign company duly organized and operating under the laws of Austria.

3. Upon information and belief, Defendant DEVAL was, and still is, a foreign corporation or other business entity organized under and existing by virtue of foreign law, with an office in Turkey.

4. By a charter party dated March 12, 2007, FARGO chartered the Vessel M/V "ASKABAT" (hereafter referred to as "Vessel") from DEVAL for one time charter trip of about forty (40) days from Brazil to Skaw/Black Sea range, for the purpose of carriage of any lawful cargoes on the Vessel.

5. During the course of the aforesaid charter, certain disputes arose between the parties regarding the Vessel's off-hire at the loading ports of Santos and Rio de Janeiro, Brazil and her late arrival at the discharge port of Dakar, Senegal.

6. The Vessel off-hire at loading ports was caused due to DEVAL's failure to obtain free pratique<sup>1</sup> on arrival at Santos in breach of Defendant's obligations, *inter alia*, under charter party clauses 1 and 45; the Vessel off-hire at Rio de Janeiro was caused due to DEVAL's failure to properly maintain and equip the Vessel and thereby causing and permitting her cargo loading gear to breakdown in breach of Defendant's obligations, *inter alia*, under charter party clauses 35, 84 and 85; and the late arrival at the discharge port of Dakar, Senegal was caused by DEVAL's failure to carry out the voyage with all due deliberate speed, dispatch and skill in breach of Defendant's obligations, *inter alia*, under charter party clauses 8, 11, 15 and 32.

7. As a result of Defendant's aforescribed breaches of the charter party, FARGO has sustained damages in the total principal amount, as best as may presently be approximated, of \$140,631.21, exclusive of accumulated interest, arbitration costs and attorneys fees.

8. The aforesaid charter party provides that disputes will be settled in London arbitration with English law to apply and FARGO commenced arbitration against DEVAL on or about June 5, 2007.

<sup>1</sup> Free pratique is the permission required to be obtained from local port health authorities that the Vessel is free from infectious disease or plague and that her crew is permitted to come ashore and stevedores are permitted to load/unload cargo to/from the Vessel. In the absence of free pratique a Vessel may be required to wait at quarantine anchorage.

9. Interest, costs and attorneys' fees are routinely awarded to the prevailing party in London arbitration proceedings applying English law. As best as can now be estimated, Plaintiff expects to recover the following amounts:

A.	On the principal claims:	\$140,631.21 <sup>2</sup> ;
1.	Loss of vessel time <sup>3</sup> – Santos:	\$13,840.71;
2.	Loss of vessel time – Rio de Janeiro:	\$111,300.28;
3.	Loss of vessel time – Dakar:	\$22,420;
B.	3 years of interest at 7.5% per annum:	\$35,117.92; and
C.	Attorneys fees and arbitration costs:	\$75,000.
<b>Total:</b>		<b>\$250,749.13.</b>

10. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.

11. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any assets of the Defendant held by

<sup>2</sup> The principal claim due from DEVAL is \$140,631.21 reflecting various debits and credits for other vessel items and payments made by FARGO to DEVAL under the charter party as provided in FARGO's Final Hire Statement appended hereto as Exhibit 1.

<sup>3</sup> Loss of vessel time figures includes fuel oil bunkers and other vessel items consumed and/or incurred during the off hire periods as reflected by Exhibit 1.

any garnishee(s) within the District for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claim as described above.

12. The Plaintiff also seeks an Order from this Court recognizing, confirming and enforcing any forthcoming London arbitration award(s) in Plaintiff's favor pursuant to 9 U.S.C. §§ 201 *et seq.*

**WHEREFORE,** Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint, failing which default judgment be entered against it in the sum of **\$250,749.13**.

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of **\$250,749.13** belonging to, due or being transferred to, from, or for the benefit of the Defendant, including, but not limited to, such property as may be held, received or transferred in Defendant's name, or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishes to be named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That pursuant to 9 U.S.C. §§ 201 *et seq.* this Court recognize and confirm any London arbitration award(s) or judgment rendered on the claims had herein as a judgment of this Court;

D. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

E. That this Court award Plaintiff the attorneys' fees and costs incurred in this action; and

F. That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: New York, NY  
February 8, 2008

The Plaintiff,  
FARGO FREIGHT GmbH

By: 

Kevin J. Lennon

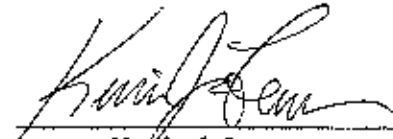
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New York, NY 10170  
Phone (212) 490-6050  
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[kjl@lenmur.com](mailto:kjl@lenmur.com)

**ATTORNEY'S VERIFICATION**

State of New York     )  
                                  )     ss.:   City of New York  
County of New York    )

1.     My name is Kevin J. Lennon.
2.     I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3.     I am a partner in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.
4.     I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5.     The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6.     The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:       New York, NY  
              February 8, 2008

  
Kevin J. Lennon

## EXHIBIT 1

MV Askabat - Acct Fargo Freight GmbH - C/P 02/03/2007				
Final-Hire Statement				
Date	26/10/2007			
Delivery:	Disp Tema	14/03/2007 15.00 gmt	Actual	
Redelivery:	Disp Birkenhead	14/05/2007 21.10 gmt	Actual	
		61.2589 Days		
Hire details	Notes		Credit	Debit
Daily Hire		12,500.00		765,711.81
Address Commission	Comm 3.75%		28,714.19	
Brokerage Commission	Comm 1.25%		9,571.40	
Bunker exps:				
Bunker on delivery	IFO 496.000	310.00		153,760.00
Bunker on delivery	MGO 43.000	590.00		27,140.00
Bunker on redelivery	IFO 526.800	310.00	163,308.00	
Bunker on redelivery	MGO 51.100	590.00	30,140.00	
On Hire Survey			0.00	
Off Hire Survey			0.00	
Owners exps:				
Santos	Final		0.00	
Rio de Janeiro	Final		1,141.80	
Dakar	Final		0.00	
Birkenhead	Final		0.00	
Commission on Owms exp	2.50%		28.55	
Various expenses				
C/EA		USD 1,700.00		3,471.23
ILHOC		USD 3,500.00		3,500.00
Charterers deductions				
Off-hire Santos 24/04/2007	1.0799 Days	11,875.00	12,823.81	
Bunker cons. Santos off-hire 24-25/03/07	IFO 0.000	310.00	0.00	
Bunker cons. Santos off-hire 24-25/03/08	MGO 1.520	590.00	955.71	
C/EA during off-hire		USD 1,700.00	61.19	
Off-hire Rio de Janeiro	8.684028 Days	11,875.00	103,122.83	
Bunker cons. Rio de Janeiro off-hire	IFO 0.000	310.00	0.00	
Bunker cons. Rio de Janeiro off-hire	MGO 13.026	590.00	7,655.36	
C/EA during off-hire		USD 1,700.00	492.09	
Wharfage exps during Rio de Janeiro off-hire			15,794.74	
Unjustified late arrival at Dakar	0.8080 Days	12500.00	10,100.00	
and bunker overconsumption	IFO 15.000	310.00	4,650.00	
and bunker overconsumption	MGO 13.000	590.00	7,670.00	
Additional amounts debited by Owners				
Various services				0.00
Remittance to Owners				
Charterers remittance:			359,475.00	
Charterers remittance:	15/03/2007		96,433.06	
Charterers remittance:	13/04/2007		38,955.34	
Charterers remittance:	02/05/2007		194,390.68	
Charterers remittance:	07/05/2007		8,691.48	
Charterers remittance:	10/05/2007			
TOTAL			1,094,214.25	953,583.03
Balance Charterers favour			0.00	140,631.21
	E. & O. E.		1,094,214.25	1,094,214.25
To remitted to:				
CORNER BANCA S.A.				
LUGANO				
Confo USD. No. 343081.02				
Swift Code: CBLUXH22				
Clearing: 8490				
Beneficiary: Fargo Freight GmbH				
Correspondent bank: Citibank NA - USA				



**Wharfage exps in RDJ**

Total days at berth: 30/03/2007 21.55  
 12/04/2007 07.45  
 12.4097 Days

Total wharfage exps: R\$ 45,675.00

Total off-hire in RDJ: 8.6840 Days

Wharfage exps during off-hire: R\$ 31,962.23

roe 2.0236 USD 15,794.74